

Internal Revenue Service

Department of the Treasury
Washington, DC 20224

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Date:
October 5, 2010

LEGEND

X =

State =

Date 1 =

Date 2 =

Date 3 =

Date 4 =

Dear :

This responds to a letter dated April 29, 2010, submitted on behalf of X, requesting a ruling under § 1362(f) of the Internal Revenue Code.

The information submitted states that X was incorporated in State on Date 1. X made an election to be treated as an S corporation effective Date 2. On Date 3, X issued stock warrants in connection with debt financing transactions. The issuance of the warrants may have terminated X's S corporation election if the warrants were treated as a second class of stock. A corporation purchased X on or about Date 4 causing X's S corporation election to terminate.

X represents that the possible termination was not motivated by tax avoidance or retroactive tax planning. X and its shareholders have agreed to make any adjustments that the Commissioner may require, consistent with the treatment of X as an S corporation.

Section 1362(f) provides that if (1) an election under § 1362(a) by any corporation (A) was not effective for the taxable year for which made (determined without regard to § 1362(b)(2)) by reason of a failure to meet the requirements of § 1361(b) or to obtain shareholder consents or (B) was terminated under § 1362(d)(2) or (3), (2) the Secretary determines that the circumstances resulting in the ineffectiveness or termination were inadvertent, (3) no later than a reasonable period of time after discovery of the circumstances resulting in the ineffectiveness or termination, steps were taken (A) so that the corporation is a small business corporation or (B) to acquire the shareholder consents, and (4) the corporation and each person who was a shareholder of the corporation at any time during the period specified pursuant to § 1362(f), agrees to make such adjustments (consistent with the treatment of the corporation as an S corporation) as may be required by the Secretary with respect to such period, then, notwithstanding the circumstances resulting in the ineffectiveness or termination, the corporation will be treated as an S corporation during the period specified by the Secretary.

Based solely on the facts submitted and the representations made, we conclude that X's S corporation election may have terminated Date 3 because X may have had more than one class of stock. However, we conclude that, if X's S corporation election was terminated, such termination was inadvertent within the meaning of § 1362(f). Consequently, we rule that, pursuant to the provisions of § 1362(f), X will be treated as continuing to be an S corporation from Date 3 to on or about Date 4, provided X's S corporation election was valid and provided that the election was not otherwise terminated under § 1361(d).

Except as specifically ruled above, we express no opinion concerning the federal tax consequences of the transactions described above under any other provisions of the Code. Specifically, we express no opinion as to whether X is otherwise eligible to be treated as an S corporation.

This ruling is directed only to the taxpayer that requested it. Section 6110(j)(3) provides that it may not be used or cited as precedent.

Pursuant to a power of attorney on file, a copy of this letter is being sent to X's authorized representatives.

Sincerely,

Charlotte Chyr
Senior Technician Reviewer, Branch 2
Office of the Associate Chief Counsel
(Passthroughs & Special Industries)

Enclosures (2):

Copy of this letter

Copy for § 6110 purposes